

C037018.9 L

Approved by the Registrar-General of Land, Wellington No. 212336.

North Auckland  
Land Registry Office

# MEMORANDUM OF LEASE

LESSORS: DOWNTOWN HOUSE (NO. 8) LIMITED at Auckland

LESSEE: DOWNTOWN HOUSE (NO. 8) LIMITED at Auckland

## SCHEDULE OF LAND AND FLAT

C.T. REFERENCE	DESCRIPTION OF LAND AND LOCALITY	DESCRIPTION OF FLAT
54C/378	Lot s 2 and 4	Flat No. 8
Area	Deposited Plan 100018	on Deposited Plan 133071 (hereinafter called "the Flat") which is part of a building erected on the said land comprising Flats Nos
4595m <sup>2</sup>	Situated in part Allotment 16 Small Farms near Onehunga	as shown on the said plan (hereinafter called "the said building").

### Encumbrances, Liens, and Interests:

- Section 308(4) Local Government Act 1974
- Fencing Covenant in Transfer 382818
- Resolution B.327180.4
- Easement Certificate B.327180.13 (subject to Section 309(1)(a) Local Government Act 1974)

TERM 999 years commencing on the 1st day of September 19 89

RENTAL 10 cents per annum payable yearly in advance if demanded in writing by the Lessors prior to the commencement of the year for which it is payable.

### CONDITIONS The parties hereby agree that:

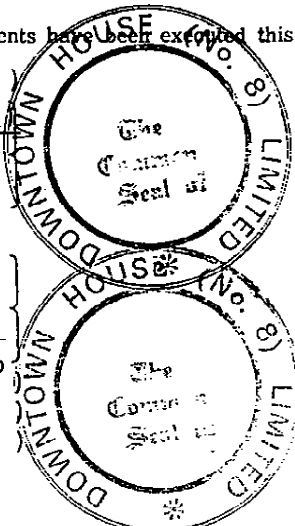
- The covenants conditions and agreements set out in Schedules A, B & C herein form part of this Lease.
- In any case where the Lessors are proprietors of a leasehold estate in the said land the covenants conditions and agreements set out in Schedule D herein form part of this Lease.
- ~~The words "Flat share" shall be deemed to mean a one- share calculated in terms of the number of flats contained in the said building.~~
- The words "Land share" shall be deemed to mean a one-fifteenth share calculated in terms of the number of flats contained in all buildings erected on the said land or to be erected
- In respect of Clauses 6, 13 & 22 in the Schedules hereto where neither sub-clause (a) or sub-clause (b) has been deleted, sub-clause (a) shall form part of this Lease as hereinbefore provided and sub-clause (b) shall not.

AND the Lessors DO HEREBY LEASE to the Lessee and the Lessee DO TH HEREBY ACCEPT this Lease of the Flat to be held by the Lessee as tenant and subject to the conditions restrictions and covenants set forth herein.

IN WITNESS WHEREOF these presents have been executed this

1st day of September 1989

THE COMMON SEAL of  
DOWNTOWN HOUSE (NO. 8)  
LIMITED was hereunto  
affixed in the presence of:



Governing Director

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DOWNTOWN HOUSE (NO. 8)  
LIMITED was hereunto  
affixed in the  
presence of:

Governing Director

*BARFOOT & THOMPSON DISQUITED*  
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SCHEDULE A (Lessees Covenants)

THE LESSEE DOETH HEREBY COVENANT WITH THE LESSORS:

1. PAYMENT OF RENT

To pay the rent in the manner and at times hereinbefore provided.

2. PAYMENT OF MAINTENANCE EXPENSES

The Lessee shall forthwith upon demand in writing by the Lessors or their agent pay to the Lessors or a person nominated by the Lessors or a majority of the Lessors:

(a) ~~A Flat share of all costs and expenses properly incurred by the Lessors in respect of the said building including any costs and expenses incurred pursuant to Clause 17 (a) hereof.~~

(b) A Land share of all costs and expenses properly incurred by the Lessors in respect of the said land including any costs and expenses incurred pursuant to Clause 17 (b) hereof.

PROVIDED ALWAYS that should any repairs become necessary or any work be required ~~in respect of any part of the said building or the electrical and plumbing equipment, drains or other amenities serving the said building~~ or in respect of any part of the said land as a result of the negligence or wilful act either of the Lessee or his servants, agents or invitees or of any person residing in the Flat then in any such event the Lessee shall pay to the Lessors the whole of the cost of such repairs or work.

3. RESTRICTIONS ON USE

The Lessee shall use the Flat for residential purposes only and will not do or suffer to be done any act, matter or thing which is or may be an annoyance, nuisance grievance or disturbance to the other lessees or occupants of any building on the said land and shall not bring into or keep in the Flat any cat, dog, bird or other pet which may unreasonably interfere with the quiet enjoyment of the other lessees or occupants of any building on the said land or which may create a nuisance.

4. NOT TO CREATE FIRE OR OTHER HAZARDS

The Lessee shall not bring into or keep in the Flat any goods or any substance of a highly combustible nature or do or permit to be done anything (including the unauthorised use of light or power fittings) which may render an increased premium payable for any insurance cover on any ~~part of the said building~~ <sup>Flat on the land</sup> or voidable any such insurance cover.

5. TO COMPLY WITH STATUTES

The Lessee shall not use the Flat for any illegal purposes and the Lessee shall comply with all Statutes, Regulations and By-Laws of any Local Authority in so far as they affect the Flat.

6. (a) MAINTENANCE OF EXTERIOR AND INTERIOR BY LESSEE

The Lessee shall at his own cost and expense keep and maintain in good order condition and repair both the interior and exterior of the Flat including any electrical and plumbing equipment, drains, roof, spouting, downpipes and other amenities serving the Flat PROVIDED HOWEVER that where any part of the Flat or the electrical and plumbing equipment drains or other amenities serving the Flat also relate to or serve (a) any other flat in any building erected on the said land or (b) any part of any such building which the Lessors are liable to maintain pursuant to this Lease, then the same shall be maintained in good order condition and repair by the Lessee together with (a) the lessees of the other flats to which the same relate or which are served thereby and (b) the Lessors where the same relate to or serve any part of any such building AND the cost of so doing shall be borne by the Lessee, the lessees of such other flats and the Lessors as the case may be in such shares as may be fair and reasonable having regard to the use and benefit derived therefrom.

OR

~~6. (b) MAINTENANCE OF INTERIOR ONLY BY LESSEE~~

~~The Lessee shall at his own cost and expense keep and maintain in good order condition and repair the interior of the Flat (including the doors, windows and fitting of any kind but not any part of the structure, frame work or foundations) together with any electrical and plumbing equipment and any drains exclusively relating to or serving the Flat.~~

7. INSPECTION BY LESSORS

The Lessee shall permit the Lessors or their representatives at all reasonable times to enter the Flat to inspect the condition of the same.

8. TO KEEP COMMON AREAS CLEAR AND TIDY

The Lessee shall not leave or place ~~in the passageways or stairways of the said building~~ or in any parking area or in the grounds surrounding any building on the said land any obstructions whatsoever and shall not deposit any refuse or rubbish therein or thereon and shall place any rubbish containers in such reasonable location approved by the Lessors.

9. TO PAY FOR SERVICES TO FLAT

The Lessee shall duly and punctually pay all charges for water electricity gas or other supplies or services relating solely to the Flat.

10. NOT TO MAKE STRUCTURAL ALTERATIONS

The Lessee shall not make any structural alterations to the said ~~building~~ <sup>Flat</sup> nor erect on any part of the said land any building, structure or fence without the prior consent of the Lessors first had and obtained on each occasion PROVIDED HOWEVER that such consent shall not be unreasonably withheld.

11. USE OF EXCLUSIVE AND COMMON AREAS

The Lessee shall not without the written consent of the Lessors in any way use or enjoy any part of the said land except: (a) The Flat (b) That part of the said land relating to the Flat marked or shown K on Deposited Plan No. 133071 ; (c) That part of the said land marked or shown common area on Deposited Plan No. 133071/ but only for the purposes of reasonable ingress and egress by vehicle or on foot; together with Lot 4 on Deposited Plan 100018

12. PRESERVATION OF LESSEES EXCLUSIVE AREA

The Lessee shall at all times keep all that part of the said land (and all amenities thereon) relating to the Flat marked or shown K on Deposited Plan No. 133071 in a neat and tidy condition and in good repair.

13. (a) SEPARATE INSURANCE EFFECTED BY LESSEE

The Lessee shall effect and at all times keep current a separate and comprehensive insurance policy (including fire and earthquake risks) to the full insurable value thereof ~~on such parts of the said building as such Lessee holds as tenant.~~

on the Flat OR

SPACES TO BE COMPLETED AND AMENDED AS NECESSARY

~~13. (b) PAYMENT OF PREMIUM ON REPLACEMENT POLICY EFFECTED BY LESSORS~~

The Lessee shall pay to the Lessors or a person nominated by the Lessors or a majority of the Lessors a Flat share of the premium and other moneys payable in respect of the policy of insurance to be effected by the Lessors pursuant to Clause 20 (b) hereof PROVIDED THAT in any case whereby arrangement between the Lessors and the insurance company the premium in respect of each Flat in the said building shall be assessed and payable separately then the Lessee shall pay the separate premium whenever the same is due direct to the insurance company and shall if and whenever required by the Lessors produce to the Lessors the receipt for payment of the same.

14. LESSEES OWNERSHIP OF SHARE IN FEE SIMPLE

The Lessee shall remain the owner of a Land share in the fee simple of the laid land while he continues to be a Lessee hereunder. If the Lessee (unless by these presents expressly authorised so to do) shall deal with either his interest hereunder or his interest in the fee simple in such a manner that both leasehold and freehold interests are not owned by the same person then this Lease shall immediately determine without however discharging the Lessee from payment of any moneys owing hereunder or releasing him from liability arising from any other breach previously committed provided always that this Clause shall not apply to the first Lessee hereof.

15. PAYMENT OF RATES

The Lessee shall pay all charges and rates separately charged or levied in respect of the Flat and the Lessee's undivided share in the fee simple of the said land PROVIDED HOWEVER that if no separate charges and rates are so charged or levied then the Lessee shall pay to the Lessors the Lessee's Land share of the charges and rates charged or levied in respect of the whole of the said land.

SCHEDULE B (Lessors Covenants)

THE LESSORS DO AND EACH OF THEM DOth HEREBY COVENANT WITH THE LESSEE:

16. QUIET ENJOYMENT

The Lessee performing and observing all and singular the covenants and conditions on his part herein contained and implied shall quietly hold and enjoy the Flat without any interruption by the Lessors or any person claiming under them.

17. MAINTENANCE BY LESSORS

The Lessors shall keep and maintain in good order repair and condition:

~~(a) Such parts of the said building as are not the responsibility of any lessee pursuant to the leases granted in respect of any flat forming part of the said building including the electrical and plumbing equipment, drains, roofs, spouting, downpipes and other amenities serving the same; and~~

(b) Such parts of the said land including the grounds, paths, fences, swimming pools and other common amenities thereon as are not the responsibility of any lessee pursuant to the leases granted in respect of any flat.

AND will cause the aforesaid parts of the said building and the said land at all times to be managed and maintained to a high standard. In the performance of the foregoing covenants the Lessors or their agents shall have the right (if necessary) to enter the Flat in order to effect such work upon giving reasonable notice to the Lessee.

18. LEASES OF OTHER FLATS

The Lessors shall lease the other flats on the said land only on terms similar to those set forth in this Lease and whenever called upon by the Lessee so to do to enforce the due performance and observance by the lessees named in such other leases of all obligations as by such other leases are cast on such lessees and for the purposes aforesaid the Lessors do irrevocably hereby appoint the Lessee hereunder for the time being as the Attorney and in the name of the Lessors to do all such acts and in particular but not in limitation to serve such notices and institute such proceedings as may be necessary for the proper compliance by the Lessors of the obligations cast on them by this Clause.

SCHEDULE C (Mutual Covenants)

AND IT IS HEREBY COVENANTED AND AGREED BY AND BETWEEN THE LESSORS AND EACH OF THEM AND BY AND BETWEEN THE LESSORS AND THE LESSEE:

19. DETERMINATION OF LEASE FOR DEFAULT

That if and whenever the Lessee shall have made any breach or default in the observance or performance of any of the covenants conditions and restrictions herein contained and shall not have remedied such breach or default in all respects within two months of the date of receipt by the Lessee of written notice from the Lessors (other than the Lessee) specifying such breach or default then it shall be lawful for the Lessors (other than the Lessee) to re-enter the Flat or any part or parts thereof in the name of the whole and to determine this Lease and the estate and interest of the Lessee herein and to expel and remove the Lessee but without thereby releasing the Lessee from any liability for any previous breach non-observance or non-performance of any of the said covenants conditions and restrictions PROVIDED HOWEVER that any such forfeiture or determination shall be void and of no effect unless a copy of the notice specifying the breach or default by the Lessee has been served on every mortgagee of this Lease where the Lessors have actual notice of the address of the Mortgagee before or within seven days after the date of service of such notice upon the Lessee.

20. (a) RE-INSTATEMENT BY LESSEE (where Clause 13(a) applies)

That in the event of the Flat being destroyed or damaged by fire earthquake or from any cause whatsoever during the term hereby created the Lessee shall with all reasonable despatch repair and make good such destruction or damage to the reasonable satisfaction of the Lessors and the cost of so doing shall be borne by the Lessee AND in the event of such destruction or damage occurring in respect of any part of the said building not held by a lessee pursuant to any lease then the Lessors shall with all reasonable despatch repair and make good such destruction or damage and the Lessee shall bear a Flat share of the cost of so doing.

OR

~~20. (b) RE-INSTATEMENT BY LESSORS (where Clause 13(b) applies)~~

That the Lessors shall in the names of the Lessors and Lessee for their respective rights and interests insure and keep insured the said building against fire and earthquake and such other risks as are normally covered under a comprehensive House-owners policy for the full amount available under a replacement policy and shall pay the premiums on such policy as the same become due AND in the event of the said building being damaged or destroyed by any cause whatsoever the Lessors shall with all reasonable despatch repair and make good such destruction or damage and in the event of the moneys received under the said policy of insurance being insufficient to repair and re-instate the said building as aforesaid then the Lessee shall bear a Flat share of such insufficiency unless such damage or destruction was caused by the negligence of one or more of the Lessors in which case the insufficiency shall be borne by that party or those parties.

**21. LESSORS NOT LIABLE FOR WATER DAMAGE**

That the Lessors shall not be liable to the Lessee or any other person for any water damage caused either by the overflow of the water supply ~~to the said building or~~ to the Flat or by rainwater entering the Flat.

**22. (a) SUBLETTING BY LESSEE**

The Lessee shall be entitled to let the Flat only to a reputable and solvent subtenant and the Lessee shall ensure that the subtenant first enters into a Tenancy Agreement with the Lessee whereby the subtenant covenants not to do or permit anything to be done in upon or around the Flat which if done or permitted to be done by the Lessee would constitute a breach of any of the covenants conditions and restrictions herein contained.

OR

~~**22. (b) RESTRICTED SUBLETTING BY LESSEE**~~

~~The Lessee shall not without the prior consent in writing of the Lessors or a majority of the Lessors first had and obtained for that purpose on every occasion sublet or part with the possession or occupation of the Flat or any part thereof but such consent shall not be unreasonably or arbitrarily withheld in any case where:-~~

- ~~(a) the proposed subletting is for a term not exceeding one year during which the Lessee is unable to personally occupy the Flat and,  
(b) the proposed subletting is to a reputable and solvent person who first enters into a Deed of Covenant with the Lessors to observe perform and fulfill all the obligations of the Lessee hereunder and to be bound by the provisions of this present clause such Deed of Covenant to be prepared by the solicitor for the Lessors at the cost and expense of the Lessee.~~

~~Any underletting within the meaning of Sub-section (2) of Section 109 of the Property Law Act 1952 without such consent as aforesaid shall constitute a breach of this present clause.~~

**23. PERFORMANCE OF LESSEES COVENANTS BY LESSORS**

That in case of default by the Lessee at any time in the observance or performance of any of the covenants conditions and restrictions herein contained it shall be lawful but not obligatory upon the Lessors or a majority of the Lessors (but without prejudice to any of the other rights powers or remedies of the Lessors) at the cost and expense of the Lessee in all things to pay all or any moneys and to do and perform all or any acts or things in the opinion of the Lessors or a majority of the Lessors reasonably necessary for the full or partial performance or observance of such covenants conditions or restrictions or any of them and if necessary or convenient for the purpose of exercising any of the powers herein conferred upon the Lessors to enter by Servants agents contractors or workmen upon the Flat or any part thereof AND the Lessee will immediately on demand pay to the Lessors all moneys so paid by the Lessors and the costs charges and expenses of each performance and observance by the Lessors and until such payment the same shall be treated as an advance to the Lessee by the Lessors and shall bear interest at the rate of Ten dollars (\$10) per centum per annum computed from the date or respective dates of such moneys being expended until payment thereof to the Lessors PROVIDED HOWEVER that for the purposes of this Clause 23 the word "Lessors" shall be deemed to mean Lessors other than the Lessee.

**24. POWER OF SALE OF LESSEE'S FLAT BY LESSORS**

That in the event of this lease being determined in the manner herein provided then in any such case:-

- (a) the Lessee shall at the direction of the Lessors sell his share in the fee simple of the said land to such person and at such consideration as may be nominated by the Lessors and shall execute all such documents as shall be required to complete any such sale; and  
(b) the Lessors shall use reasonable endeavours to obtain a fair market price for the Lessee's said share in the fee simple but shall not be liable to the Lessee in respect of any loss howsoever incurred; and  
(c) the proceeds of such sale shall be paid to the Lessors who shall be entitled to deduct therefrom all moneys owing by the Lessee to the Lessors and also all expenses and costs howsoever incurred by the Lessors in connection with the arranging of such sale and the completion thereof, and any balance of such proceeds shall be paid to the Lessee by the Lessors;

AND the Lessee doth hereby irrevocably appoint the Lessors to be the Attorneys of the Lessee for the purpose of doing any act matter or thing or executing any document required in connection with the sale of the Lessee's said share in the fee simple (in the event of the Lessee making default in so doing) and no person shall be concerned to see or enquire as to the propriety or expediency of any act matter or thing done or agreed to be done by the Lessors pursuant to this Clause AND the Lessee hereby agrees to allow ratify and confirm whatever the Lessors shall do or agree to do by virtue of any of the powers herein conferred on them PROVIDED HOWEVER that for the purposes of this Clause 24 the word "Lessors" shall be deemed to mean Lessors other than the Lessee.

**25. NON-MERGER**

That there shall be no merger of this Lease with the Lessee's freehold estate in the said land.

**26. ARBITRATION**

That if any dispute or question or difference whatsoever shall arise between the parties to this Lease or their respective representatives or assigns or between one of the parties hereto and representatives of the other of them relating to these presents or any clause or anything herein contained or the construction hereof or as to duties or liabilities of either party in connection with the said land, ~~the said building or the Flat~~ or as to the use or occupation thereof then and in every such case the matter in difference shall be referred to arbitration in accordance with the Arbitration Act 1968 and its Amendments or any Act in substitution thereof.

**27. PROCEDURE FOR DECISIONS**

That in the event of the Lessee or any Lessor requiring any matter or thing to be done by the Lessors which the Lessors are empowered to do pursuant to the terms of this Lease or pursuant to their rights and powers as owners of the said land and the buildings thereon or which may be desirable for the efficient and harmonious administration of the said land and the buildings thereon the following procedure shall be carried out:-

- (a) Such Lessee or Lessor shall give notice thereof in writing setting out the proposed action and shall cause the same to be served upon all the other Lessors either personally or by leaving the same at or posting the same to the last known respective place of abode or address of the other Lessors and in the event of such notice being effected by post the same shall be sent by registered letter and service shall be deemed to have been effected on the day after posting thereof.  
(b) If the proposed action is not agreed to unanimously within fourteen days after the last date of service of the said notices that matter shall deemed to be a question to be arbitrated pursuant to Clause 26 hereof.  
(c) The parties hereto shall be bound by any decision arrived at in accordance with the provisions of this Clause and the parties hereto shall give all reasonable assistance in the carrying out and implementation of such decision.

28. COLOUR SCHEME

That notwithstanding the provisions of Clause 27 hereof, any exterior painting of the said ~~building~~ Flat shall be carried out in such a colour scheme as is agreed upon by the Lessors but if agreement cannot be reached then the colour scheme shall be as near as is practicable to the existing colour scheme.

29. NON-DEVOLUTION OF LIABILITY

That without negating the provisions of Sections 97 and 98 of the Land Transfer Act 1952, upon registration of a Memorandum of Transfer of the Lessee's interest hereunder to any Transferee, the Transferor shall thenceforth be released from all future liability whatsoever under the covenants and agreements herein expressed or implied but without releasing the Transferor from any liability which may have arisen hereunder prior to the registration of such Memorandum of Transfer and thenceforth after the registration of any such Memorandum of Transfer the obligations herein expressed or implied on the part of the Lessee shall in all respects devolve upon and be observed and performed by such Transferee, and the Lessors shall have no recourse to the Transferee's antecedents in title.

30. INTERPRETATION

That wherever used in these presents:—

- (a) The expression "the Lessors" shall include and bind the person/s executing these presents as Lessors and all the Lessors for the time being under these presents and all the respective executors administrators successors assigns and successors in title of each Lessor and if more than one jointly and severally.
- (b) The expression "the Lessee" shall include and bind the person/s executing these presents as Lessee and all the Lessees for the time being under these presents and all the respective executors administrators successors assigns and successors in title of each Lessee and if more than one jointly and severally.
- (c) The expression "a majority of the Lessors" shall be deemed to mean any number of Lessors for the time being who together own more than an undivided one-half share in the fee simple of the said land.
- (d) Words importing one gender shall include the other gender as the case may require.
- (e) Words importing the singular or plural number shall include the plural or singular number respectively.
- (f) The clause headings shall not form part of this Lease and shall have no bearing on the construction or interpretation of the same.

~~SCHEDULE D (Special Covenants for Leasehold Estates)~~

31. IT IS HEREBY COVENANTED AND AGREED BY AND BETWEEN THE LESSORS AND THE LESSEE AS FOLLOWS:—

(a) Interpretation

- (i) The expression "Head Lease" means the Memorandum of Lease referred to in the Schedule of Land and Flat and the expressions "Head Lessor" and "Leasehold Estate" shall have corresponding meanings.
- (ii) The expressions "fee simple" "freehold interest" and "freehold estate" where they occur in Schedules A, B & C hereof shall unless inconsistent with the context refer to and include the leasehold estate.

(b) Lessee to pay share of Head Lease rental

That the Lessee will upon demand in writing by the Lessors pay to the Lessors or a person nominated by the Lessors or a majority of the Lessors a Land share of the rental from time to time payable under the Head Lease and any other moneys expended by the Lessors in the performance of their obligations thereunder or in or about any renewal thereof as hereinafter provided.

(c) Lessee to observe terms of Head Lease

That the Lessee will from time to time and at all times observe perform and keep all and singular the covenants agreements and conditions contained and implied in the Head Lease so far as they affect the Flat and will save and keep harmless and indemnify the Lessors from and against all costs claims damages expenses actions and proceedings for or on account of breach of covenant or otherwise under the Head Lease as shall be occasioned by breach by the Lessee of any covenant condition or agreement herein contained or implied and on his part to be observed performed or fulfilled.

(d) Lessors to pay Rent and observe Covenants:

That the Lessors shall and will throughout the term hereby created pay the rent reserved by and duly and punctually perform and observe all and singular the covenants and provisions expressed or implied in the Head Lease and on the part of the Lessee thereunder to be performed and observed and will not do omit or suffer any act or thing whereby or in consequence whereof the power of re-entry into possession or any of the incidental ancillary or subsidiary powers vested in the Head Lessor by the Head Lease shall or may become exercisable.

(e) Rights of Renewal


That the Lessors will from time to time and so often as the same shall require to be done and at all proper times for so doing give all such notices do all such things execute all such documents and pay all such costs, charges and expenses as shall or may be necessary or desirable to procure from the Head Lessor the renewal of the Head Lease and of every lease so procured AND when and so often as the Head Lessor shall grant and execute unto the Lessors hereunder a new Head Lease as aforesaid the Lessors hereunder will at the cost and expense of the Lessee hereunder deliver unto the Lessee hereunder and the Lessee hereunder shall accept and take in substitution for this present sublease or (as the case may be) for the then last preceding sublease of the Flat for the term of such newly granted head lease less the last day thereof a sublease at the same Flat share of rental and upon with and subject to the same covenants agreements conditions and provisions as are herein contained and implied including this present clause AND for the better enabling the Lessee hereunder to secure and enjoy the benefit of this present Clause the Lessors for the time being hereunder DO HEREBY JOINTLY AND EACH OF THEM DO TH SEVERALLY IRREVOCABLY NOMINATE CONSTITUTE AND APPOINT the Lessee for the time being hereunder the Attorney for them and each of them and in their name and in the name of each of them to give all such notices and to do all such acts matters and things and to make all such appointments and to pay all costs, charges and expenses and to give, make execute and deliver all such documents and paper writings as shall for all or any of the purposes aforesaid be desirable necessary or expedient.

SCHEDULE C (CONTINUED)

31. THAT the Lessors other than the Lessee shall not during the term hereby created be entitled to use occupy or enjoy that part of the said land adjacent to the flat shown marked K on Deposited Plan 133071 (hereinafter called "the said area") TO THE INTENT that the foregoing restrictive covenant shall at all times during the term hereof remain appurtenant to the estate and interest of the Lessee in the flat for all purposes connected with the use, occupation and enjoyment thereof PROVIDED HOWEVER that the Lessors shall be entitled to enter upon the said part of the land to the extent that may be necessary in order to effect repairs or maintenance to the said building or any services relating thereto AND the Lessee shall at all times keep the said area in a neat and tidy condition and in good repair.

32. IN the following clauses of this lease:

- (a) the expression "the relevant area" shall mean those parts of the said land as are shown marked "Q" and "S" on Deposited Plan 133071; and
- (b) the expression "the Lessors" shall mean (to the exclusion of any other person or persons) such of the registered proprietors of any estate in fee simple in the said land as are not the registered proprietors of an estate in leasehold in any flat or dwelling erected on the said land and shall include Sea Cliff Builders Limited or its nominee so long as Sea Cliff Builders Limited or its nominee shall be registered proprietor of not less than a three-fifteenths (3/15) undivided share in the said land notwithstanding that Sea Cliff Builders Limited or its nominee is the registered proprietor of an estate of leasehold in any flat or dwelling erected on the said land.



33. THAT the Lessors shall be entitled at any time or times hereafter to develop further the relevant area by erecting on the area marked "S" on Deposited Plan 133071 one dwelling and if desired an attached single garage or a single carport attached or detached and/or other buildings normally appurtenant to or associated with a dwelling (hereinafter together called a "permitted dwelling") and/or by erecting on the area marked "Q" on Deposited Plan 133071 one or two permitted dwellings as hereinbefore defined, all such permitted dwellings to conform in all respects to:

- (a) the requirements of the Local Authority and any other Authority having jurisdiction; and
- (b) the requirements set forth in any Agreement for the time being in force between the Lessors and the Lessee relating to the erection of the permitted dwellings

and in order to give effect to the foregoing the Lessors and their representatives, agents, workmen, contractors and their servants and other persons authorised in that behalf by the Lessors may enter onto and remain on the relevant area at all reasonable times with or without motor vehicles machinery and equipment necessary or desirable to erect the permitted dwellings provided that the Lessors shall take all reasonable steps to minimise any inconvenience to the Lessee occasioned by such work.

34. THAT on substantial completion by the Lessors of all or any of the permitted dwellings the Lessee shall at the cost in all things of the Lessors and when so requested by the Lessors join in and execute as a Co-Lessor a lease of each such substantially completed permitted dwelling for a term corresponding with the unexpired period of this Lease, which leases shall contain restrictive covenants in the same form as clause 31 hereof in respect of those parts of the relevant area exclusive of each of the particular permitted dwellings as the Lessor shall nominate and shall otherwise contain the same terms and conditions as are contained in this Lease (excluding however



- (b) The Power of Attorney shall be prepared by the solicitors for the Lessors and shall be given and executed prior to the registration of the transfer or other disposition hereinbefore in this clause referred to. A copy of the Power of Attorney shall forthwith thereafter be deposited in the Land Transfer Office.
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clauses 32 to 37 hereof in the case of the third permitted dwelling completed) and the Lessee shall do all such things as shall be necessary or desirable in order to enable registration of such leases (including co-operating in the deposit of (a) new Flats Plan(s)) and to obtain the consent thereto of any mortgagee of the Lessee's estate and interest in the said land, and the Lessors shall at the Lessors' expense with all due speed register such leases.

35. THAT in consideration of the granting to the Lessee of this Memorandum of Lease the Lessee doth hereby irrevocably nominate constitute and appoint the Lessors and any nominee of the Lessors to be the true and lawful attorneys and attorney of the Lessee both as Lessee and as registered proprietor of any interest in the fee simple of the said land and on behalf of the Lessee as Lessee and/or as such registered proprietor and as fully and effectively as the Lessee either as a Lessor and/or as such registered proprietor could do if personally present to execute for the Lessee in any capacity the leases referred to in clause 34 hereof and to sign and use the name of the Lessee in any capacity to such leases and to do all such other acts and things (including signing any new Flats Plans) as shall be necessary or desirable to effect registration of such leases.

36. THAT in the event of the Lessee or the Lessors transferring or otherwise disposing of the whole or any part of their respective share in the fee simple estate in the said land, then on the occasion of each such transfer or other disposition:

- (a) A Power of Attorney shall be executed whereby the Lessee or the Lessee's transferee or disposee, as the case may be, appoints the Lessors or the Lessors' transferee or disposee, as the case may be, the Attorney of the Lessee or the Lessee's transferee or disposee, on the same basis and with the same powers as are set forth in clause 35 hereof.





- (b) The Power of Attorney shall be prepared by the solicitors for the Lessors and shall be given and executed prior to the registration of the transfer or other disposition hereinbefore in this clause referred to. A copy of the Power of Attorney shall forthwith thereafter be deposited in the Land Transfer Office.
  
- (c) The costs of preparation, stamping and registration of the Power of Attorney shall be borne by the person transferring his interest in the fee simple estate in the said land.

The reference in this clause to a transfer or other disposition by the Lessee or the Lessors of the whole or any part of their respective share in the fee simple estate in the said land shall extend to and include the exercise by any mortgagee or other person of a power of sale in respect of a share in the fee simple estate in the said.

Nothing contained in this clause shall prejudice or affect in any manner, the generality, operation or subsistence of clause 35 of this Lease.

37. THAT once erection of all of the permitted dwellings referred to in clause 33 hereof has been completed and all of the relevant leases for such permitted dwellings referred to in clause 34 hereof have been registered clauses 32 to 36 inclusive hereof shall have no further force or effect.

38. THE leases for the permitted dwellings referred to in clause 34 hereof shall provide for the Lessee to be entitled to use that part of the said land marked or shown "R" on Deposited Plan 133071 but only for the purposes of reasonable ingress and egress by vehicle or on foot.



DOWNTOWN HOUSE (NO.8) LIMITED Lessor

DOWNTOWN HOUSE (NO.8) LIMITED Lessee

Correct for the purposes of the Land Transfer Act.

TO: The District Land Registrar

**REGISTERED IN DUPLICATE**

It is requested that you note the Lessor's restrictive covenant contained in Clause 31 of the Lease against the fee simple title to the said land.

Would you please issue a composite Certificate of Title for the Leasehold estate and freehold estate referred to in the schedule herein and including a freehold estate as to an undivided one fortyfifth (1/45) share in 137 square metres Lot 4 D.P. 100018

Solicitor for the Parties

# LEASE

Composite C.T. 7881761 issued  
includes a 1/15 share in fee simple

A.L.R.

EARL KENT ALEXANDER BENNETT  
SOLICITORS  
AUCKLAND.

Solicitor for the Lessee

I hereby certify for the purposes of the Stamp and Cheque Duties Act 1971 that no Lease Duty is payable on this instrument by reason of the application of Section 35(1) of the Act and that the provisions of sub-section 2 of that section do not apply.

Solicitor for the Lessee

Particulars entered in the Register as shown in the Schedule of Land herein on the date and at the time stamped below.

District  
Assistant Land Registrar  
of the District of Wellington

225 04 SEP 89 C 037018-9  
PARTICULARS ENTERED IN  
LAND REGISTRY AUCKLAND  
ASST. LAND REGISTRAR



K.T.O.

